maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_X RACT, and RVP reduction to 7.8 psi. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Michigan Ozone State Implementation Plan for the above mentioned counties.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323 the ozone table is amended by revising the entry for the Detroit-Ann Arbor area for ozone to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Detroit-Ann Arbor Area:				
Livingston County	April 6, 1995	Attainment		
Macomb County	April 6, 1995	Attainment		
Monroe County	April 6, 1995	Attainment		
Oakland County	April 6, 1995	Attainmnet		
St. Clair County	April 6, 1995	Attainment		
Washtenaw County	April 6, 1995	Attainment		
Wayne County	April 6, 1995	Attainment		
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 95–5445 Filed 3–6–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[IL001; FRL–5164–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by Illinois for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: March 7, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzecky, 77 West Jackson Boulevard, Permits and Grants Section AR–18J, Chicago, Illinois 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 30, 1994, EPA proposed interim approval of the operating permits program for Illinois. See 59 FR 49882. The EPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for Illinois.

II. Final Action and Implications

A. Analysis of State Submission

The EPA received comments from a total of four organizations. The EPA's response to these comments is summarized in this section. Comments

supporting EPA's proposal are not addressed in this notice; however, EPA's response to all comments is available in a document contained in the docket at the address noted in the **ADDRESSES** section above.

1. Section 112(G) Implementation

The EPA received several comments regarding the proposed approval of Illinois' preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Two commentors argued that Illinois should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commentors also argued that Illinois' preconstruction review program cannot serve as a means to implement section 112(g) because it was not designed for that purpose. One commentor also asserted that such a regulatory program is unconstitutional because the section 112(g) requirements are vague.

In its proposed interim approval of Illinois' part 70 program, EPA also proposed to approve Illinois' preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a Federal Register notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Illinois must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Illinois' preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Illinois of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Furthermore, EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Illinois currently lacks a program designed specifically to implement section 112(g), Illinois' preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Illinois to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit. Illinois will be able to impose federally enforceable measures reflecting MACT for most if not all changes qualifying as a modification, construction, or reconstruction under section 112(g) because Illinois' preconstruction permitting program is not limited to criteria pollutants. 415 ILCS 5/9.1(d).

Another consequence of the fact that Illinois lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Illinois to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

In addition, one commentor incorporated by reference its comments on the proposed section 112(g) rule, and stated that the proposed rule has technical, legal, and constitutional defects that disqualify it as a valid or workable approach to section 112(g) implementation. The EPA believes the appropriate forum for pursuing objections to the legal validity of Federal regulations is by: (1) Submitting comments on a proposed rulemaking during the public comment period for that particular rulemaking, or (2) petitioning for review of the promulgated rule in the D.C. Circuit Court of Appeals. If the commentor has concerns with the final section 112(g) rule, the commentor will have the opportunity to pursue such action once the section 112(g) rule is promulgated.

Two commentors assumed that EPA would delegate the section 112(g) requirements to the State. The EPA wishes to clarify that the implementation of section 112(g) by the State, including case-by-case MACT determinations, is a requirement for approval of a State title V program. In other words, approval of the title V operating permits program confers on the State responsibility to implement section 112(g). Since the requirement to implement section 112(g) lies with the State in the first instance, there is no need for a delegation action apart from the title V program approval mechanism, except where the State seeks approval of a ''no less stringent'' program under 40 CFR part 63 subpart E. EPA's approval of Illinois' program for delegation of section 112 standards as promulgated does not affect this responsibility to implement section 112(g).

2. Variance

EPA received two comments regarding the variance provisions contained in Illinois' existing regulations. The commentors objected to EPA's position that State variances are not recognized by EPA unless a variance is issued in accordance with part 70 procedures. The commentors stated that dismissing all State-issued variances would conflict with part 70. The commentors also stated that while part 70's requirements for compliance schedules do not sanction non-compliance by a source, variances provided by the state are consistent with the recognition of non-complying sources and the requirement for compliance schedules in the permit application.

EPA agrees with the commentors that variances provided by the State could be consistent with the issuance of a part 70 permit. The inclusion of a compliance schedule in a part 70 permit is a part 70 requirement and, therefore, a State variance from the applicable requirements at the time of permit

issuance that is provided to a non-complying source may not be inconsistent with part 70. EPA would not, however, recognize variances that grant relief from the duty to comply with the terms of an issued federally enforceable part 70 permit except where such relief is granted through procedures allowed by part 70. Once again, EPA is not taking any action on Illinois' variance procedures. The Agency is only clarifying that all variances provided by the State for title V sources must be granted in accordance with part 70.

3. Insignificant Activities

Four commentors responded to EPA's proposed concerns regarding Illinois' draft insignificant activities regulations. In response to these comments EPA reviewed the draft regulations a second time. On February 2, 1995, EPA formally received a final copy of these regulations for inclusion in the State's CAAPP submittal. Please see the docket for a more detailed review of the Illinois rule.

All commentors objected to EPA's interpretation that the threshold levels of 1.0 pound per hour (lb/hr) of criteria pollutants and .1 lb/hr of HAP in 35 Illinois Administrative Code (IAC) Part 201.211 are not acceptable. These cut-off rates mentioned above are contained in the State's provision, ''Application for Classification as an Insignificant Activity.'' 35 IAC 201.211. One commentor stated that the more appropriate classification of insignificant activities lies in different sections of the State's regulations. The section referred to by the commentor distinguishes between HAP and non-HAP emissions. For HAP calculations, the rule relies on concentrations of HAPs in the form of raw material fed to an emission unit. 35 IAC 201.209(a)(1)(A)–(C). For non-HAPs, the rule refers to emission units that never exceed .1 lb/hr or .44 tpy. 35 IAC 201.210(a) (2) and (3). Although EPA cannot now determine whether or not the HAP calculations would result in emissions in amounts greater than the significance limits that will ultimately be finalized in the section 112(g) rulemaking, EPA also believes that the non-HAP provisions in 35 IAC 201.210(a) (2) and (3) do not now pose a problem for approval of the State's submittal. The Agency, therefore, is taking no action on these provisions. EPA originally objected to 35 IAC 201.210(a)(1), however, because this provision includes emissions determined to be insignificant according to the provisions in 35 IAC 201.211 (allowing sources to apply for insignificant activities that are granted by IEPA's discretion). The regulatory sections offered by the commentor, therefore, are not entirely dispositive of the issue.

Upon further reflection, EPA generally agrees with the commentors that the rate itself of 1.0 lb/hr of criteria pollutant emission cut-off contained in 35 IAC 201.211 need not be amended for full approval. Emission cut-offs approved for insignificant activities are based upon State-specific circumstances and analysis. One State's cut-offs may not be appropriate for another State's programs due to variations in local factors such as non-attainment areas, State Implementation Plans (SIP), source types, and emissions. EPA believes the State should be given substantial deference in this matter and finds the insignificance levels established by Illinois will not, in and of themselves, interfere with the State's ability to ensure that part 70 sources meet all applicable requirements of the SIP. Although a severe ozone nonattainment area exists in the State, EPA believes that it is reasonable in this case to project that the insignificant levels established in the State of Illinois' regulations will not interfere with its effort to be reclassified as attainment. Illinois believes that this level will not only reduce its administrative burden, but allow it to eventually meet its attainment demonstrations.

The Agency, however, is still concerned with the development of these regulations and continues to believe that interim approval is appropriate for these rules at this time. 35 IAC 201.208 of the State's rule does not meet the requirements of 40 CFR 70.5(c), which requires that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirements, or to evaluate the fee amount required under the schedule approved pursuant to 40 CFR 70.9. These provisions are intended to ensure that sources do not file incomplete permit applications due to inadvertent usage of a State's insignificant activity provisions. In addition, 35 IAC 201.210(b) must be amended to clarify that a source must specifically list in its permit application the activities present at its facility and not just rely on a general statement that denotes the presence of activities.

Although the emission cut-offs for criteria pollutants are not a concern at this time, revisions to the State's insignificant regulations will still be necessary for full approval of the State's program. EPA believes the State must make the following changes for full approval: (1) the language of 201.208 must worded to state that at the time of filing an application, the application must include all necessary information to determine the applicability of or to impose any applicable requirements or fees and (2) 201.210(b) must be amended so that sources specifically list the insignificant activities present at their facilities.

4. Administrative Amendments

EPA received three comments on the inclusion of the State's incorporation of emission trades based upon a SIP-approved trading program into a title V permit based upon the administrative amendment procedure. Two of the commentors requested clarification as to whether EPA intends to subject emissions trading that occurs under an emissions cap established in a part 70 permit to significant modification procedures. One commentor stated that it is not necessary for EPA to consider this provision now since Illinois has no such regulations developed concerning emissions trading.

Responding to the commentors' request for clarification, EPA does *not* interpret part 70 to require states to subject emissions trades that occur under an emissions cap established in a part 70 permit to significant modification procedures. These trades are established by a part 70 permit and, therefore, sources do not need to revise their part 70 permits when utilizing these trading provisions.

Part 70, however, does not allow the use of an administrative permit amendment to accomplish incorporation of emissions trades resulting from the application of an approved economic incentives rule, a marketable permits rule or a generic emissions trading rule into a part 70 permit. 40 CFR 70.7(d). Any substantive change to a permit term or condition must follow the permit revision procedures of part 70. Future part 70 rulemakings may change this requirement, but for the present, EPA can only review State submittals in accordance with the promulgated part 70 rulemaking of July 21, 1992.

Despite the fact that Illinois does not currently have an approved trading program, it is appropriate for EPA to now consider this State legislative provision allowing emission trades to be incorporated through the administrative amendment procedure. EPA cannot approve regulations in a State program that would conflict with provisions in the part 70 regulations.

5. Compliance Certification

Three commentors objected to EPA's proposed interim approval regarding the

State's legislation concerning compliance certification by a responsible official. The Illinois statute requires that applications be certified for truth, accuracy, and completeness by a responsible official in accordance with applicable regulations. 415 ILCS 5/39.5(5)(e). Part 70 requires that certifications be based upon a ''reasonable belief'' or that statements be based upon ''information and belief.'' 40 CFR 70.5(d) and 70.6(c)(1).

EPA agrees with the commentors to the extent that interim approval for this issue is not appropriate. Upon further review, Illinois' legislative authority for certification of responsible officials carries the same meaning as part 70. A responsible official of the permit applicant would presumably need to make some inquiry into the document being certified to ensure that the official's certification meets the requirements of the Illinois statute. In light of this, EPA will remove the compliance certification issue from the items needing further State action for final approval.

6. Enhanced NSR

Three commentors objected to EPA's proposal of interim approval for Illinois' inclusion of preconstruction review permits into part 70 permits via the administrative amendment procedures of part 70. To summarize, all three commentors object to requiring the development of specific regulations that would outline the substantive, procedural and compliance requirements necessary for incorporation of a preconstruction permit into a part 70 permit through the administrative amendment procedure. This incorporation of a preconstruction permit into a part 70 permit is known as ''enhanced new source review (NSR).''

In EPA's proposal, EPA stated that 40 CFR 70.7(d)(1)(v) allows such incorporation only when the State's preconstruction review program meets procedural and compliance requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. To utilize 40 CFR 70.7(d)(1)(v), the state must develop regulations which outline the actual requirements necessary for preconstruction permits to qualify for inclusion in part 70 permits using the administrative amendment procedure and for EPA to approve these regulations as ''substantially equivalent.'' Without these regulations, the public and EPA cannot track the issuance and amendments of part 70 permits to ensure that the permits contain all requirements. The public also needs assurance that a source will not be able to avoid the requirements of the part 70 process through a different permitting program such as preconstruction review.

Although 40 CFR 70.7(d)(1)(v) is not a necessary element of a part 70 program, the State of Illinois submitted a title V permit program that provides for the use of this procedure. EPA, therefore, must determine the adequacy of this aspect of the State's submittal. Because Illinois' existing legislative authority allows the use of enhanced NSR, without any further regulations defining substantially equivalent procedures to 40 CFR 70.6, 70.7 and 70.8, this provision is currently deficient. To cure this deficiency, the State must: (1) develop regulations outlining the exact substantive, procedural and compliance requirements for incorporation of preconstruction permits into part 70 permits and (2) submit these regulations to EPA for review and approval to ensure that these regulations are ''substantially equivalent'' to the part 70 regulations.

415 ILCS 5/39.5(13)(c)(v), therefore, will remain on the interim approval list until the State corrects this deficiency. Until regulations are developed outlining the elements of an enhanced NSR program, the State will be expected to interpret ''substantially equivalent'' in 415 ILCS 5/39.5(13)(c)(v) consistently with part 70.

7. Knowingly Tampering with Monitoring Devices

Two commentors objected to EPA's inclusion of Illinois' statutory provision concerning enforcement of knowingly tampering with any ''monitoring device or record.'' 415 ILCS 5/44(j)(4)(D). Part 70 requires that criminal fines be imposed upon one who knowingly renders inaccurate any required ''monitoring device or method.'' 40 CFR 70.11(a)(3)(iii). One commentor stated that Illinois' enforcement provision is identical in meaning and effect to the language in part 70 and is appropriate in the context of Illinois' law.

Upon further review, EPA agrees with the commentors that the Illinois legislative provisions for enforcement for knowingly tampering with monitoring devices or records is equivalent in meaning to the requirements of part 70. EPA will, therefore, remove from the list of interim approval issues the requirement that the State make a legislative change to its enforcement provisions.

8. Prompt Reporting of Deviations

EPA received two comments supporting its review of Illinois' submittal concerning the prompt reporting of deviations from permit conditions required by 40 CFR 70.6(a)(3)(iii)(B). Because Illinois did not include a definition of ''prompt'' in its legislation or regulations, an acceptable alternative is for the State to define ''prompt'' in each part 70 permit. This definition will be dependent upon the individual circumstances of each source.

The commentors, however, believe that the EPA must revise several of its earlier interim approval notices, in which the Agency conditioned final approval on including a definition of prompt in the State program, in order to provide a consistent application of the appropriate interpretation of its rules. EPA is not aware of any program approval notices that need to be corrected at this time.

B. Additional Issues

The Illinois Environmental Protection Agency (IEPA) informed the EPA, after publication of the proposed interim approval of the State's title V program, that the State cannot meet its January 1, 1995, commitment for an effective acid rain program. In light of the structure of existing state legislation, in order for an eventual full approval of the State's CAAPP, the State must incorporate by reference the Federal acid rain program into the State's existing CAAPP legislation. 415 ILCS 5/39.5(17). IEPA requested an extension of its commitment to incorporate by reference the Federal program so that the State can combine this incorporation by reference with the amendments to its CAAPP legislation required for interim approval. This presentation to the legislature would occur in the January, 1996, legislative session, rather than the January, 1995, session originally contemplated. IEPA argues that amending its CAAPP legislation once rather than twice would not interfere with the State's implementation of Phase II of the Acid Rain Program.

On January 9, 1994, EPA received a letter from Bharat Mathur, Chief, Bureau of Air, IEPA, to Stephen Rothblatt, Chief, Regulation Development Branch, EPA Region 5, detailing why the State cannot meet its January 1, 1995, commitment and reiterating its commitment to implement the Acid Rain program.

Due to the State's existing enabling legislation for titles IV and V and its commitment to implement the acid rain program in the interim period between

this final notice and an effective incorporation by reference of the Federal acid rain program into the State's legislation, EPA believes an extension of the State's commitment to adopt acid rain legislation is appropriate. Existing State legislation allows the State to collect applications for Phase II affected source and allows the State to process these applications and evidences the State's ability to implement the Federal acid rain program in accordance with all Federal regulations. 415 ILCS 5/39.5(17). Until the State officially incorporates the Federal acid rain program by reference, EPA expects the State to use its broad legislative authority for the receipt and processing of phase II applications in accordance with all Federal regulations.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by Illinois on November 15, 1993. The State must make the following changes to receive full approval:

1. The State must correct all deficiencies in its insignificant activities regulations (refer to previous discussion of insignificant activities for actual changes);

2. The State must amend 415 ILCS 5/39.5(13)(c)(vi) to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit;

3. The State must develop regulations defining enhanced NSR for the purposes of implementing 40 CFR 70.7(d)(1)(v); and

4. Due to the State's present legislative provisions concerning the Acid Rain program, the State must incorporate by reference the federal regulations for implementation of the acid rain program.

The scope of Illinois' part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Illinois, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until March 7, 1997. During this interim approval period, the State of Illinois is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Illinois. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Illinois fails to submit a complete corrective program for full approval by September 9, 1996, EPA will start an 18-month clock for mandatory sanctions. If Illinois then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Illinois has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Illinois, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Illinois had come into compliance. In any case, if, six months after application of the first sanction, Illinois still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Illinois' complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Illinois has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Illinois, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Illinois has come into compliance. In all cases, if, six months after EPA applies the first sanction, Illinois has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Illinois has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program.

Moreover, if EPA has not granted full approval to the Illinois program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Illinois upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

The EPA is also promulgating approval of Illinois' federally enforceable state operating permit program (FESOP) for the purposes of creating federally enforceable limitations on the potential to emit of Hazardous Air Pollutants (HAP) regulated under section 112 of the CAA. The EPA is approving this program as meeting the criteria articulated in the June 28, 1989, Federal Register notice for State operating permit programs to establish limits federally enforceable on potential to emit and the criteria established in section 112(l).

The EPA is also promulgating approval of Illinois's preconstruction permitting program found in 35 Ill. Adm. Code 201–203, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the period between final promulgation of section 112(g) and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between

the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Illinois adequate time for the State to adopt any necessary regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including four public comments received and reviewed by EPA on the proposal, are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Effective Date

An administrative agency engaging in rulemaking must comport with the requirements of section 553 of the Administrative Procedures Act (5 U.S.C.A., chapter 5). Section 553 requires that an agency allow at least 30 days from the date of publication before the effective date of a substantive rulemaking. If, however, good cause can be shown, then the agency may impose an effective date of less than 30 days after publication. Good cause exists to initiate an effective date less than 30 days after publication when it is in the public interest and the shorter time period does not cause prejudice to those regulated by the rule. *British American Commodity Options Corp.* v. *Bagley,* 552 F.2d 482, at 488–89 (1977). For the reasons explained below, EPA believes that good cause exists for the effective date of Illinois' CAAPP to be the date of publication of this rulemaking.

An immediate effective date is in the public's interest for several reasons. The requirement for sources to submit CAAPP applications to the State is contingent in the Illinois regulations upon the effective date of the program, not the date of publication. All sources subject to title V in Illinois must submit their title V applications to the state within one year of the effective date of the State's program. Likewise, the collection of fees, hiring of permit engineers and analysis of applicants' permits cannot begin until the State's program is effective. Illinois' program, therefore, should be adopted without any further delay inasmuch as the public has been without the protection of this comprehensive regulatory program and because any further delay would not serve the public interest.

Although it is in the public's interest to commence Illinois' title V program upon the date of publication, EPA must ensure that this action will not have any prejudicial effects upon the regulated community. *Rowell* v. *Andrus,* 631 F.2d 699, at 702–703 (1980). For example, EPA must ensure that the regulated community has sufficient notice of this rulemaking and ample opportunity to comment. EPA believes that all interested parties have had sufficient notice of this rulemaking and ample time to comment. The development of the State's CAAPP occurred over the last few years. As such, it contains a combination of legislation and regulations. These regulations were all previously subjected to public comment at the State level. The State's legislation has been effective and fully enforceable as a matter of State law since September 26, 1992, and the first set of State CAAPP regulations became effective on June 10, 1993. Illinois' CAAPP program, therefore, has been fully effective and enforceable as a matter of State law for over the past year. In addition, EPA also subjected these same regulations and legislation to public comment when it published its proposed interim approval of the State's CAAPP on September 30, 1994. From the preceding facts, it is obvious that all interested parties have had ample time both to participate in the rulemaking process and to ready themselves to comply with this program.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. sections 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for Illinois in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Illinois

(a) The Illinois Environmental Protection Agency: submitted on November 15, 1993; interim approval effective on March 7, 1995; interim approval expires March 7, 1997.

(b) Reserved

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[FR Doc. 95–5516 Filed 3–6–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC28

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Gesneria pauciflora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Gesneria pauciflora* (no common name) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. This small shrub is endemic to Puerto Rico, where only three populations are known to exist in the western mountains in the municipalities of Maricao and Sabana Grande. The species is threatened by the potential for natural disasters and modification of its highly restricted habitat. This final rule extends the Act's protection and recovery provisions to *Gesneria pauciflora.*

EFFECTIVE DATE: April 6, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box